

E-FILED - 6/12/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TEKLEZGI GEBREZGIABHER,) No. C 06-7864 RMW (PR)
Petitioner,)
vs.) ORDER GRANTING
) EXTENSION OF TIME;
) DENYING APPOINTMENT OF
) COUNSEL; DENYING
) EVIDENTIARY HEARING
MIKE C. KREMER,)
Respondent.) (Docket Nos. 11, 13, 43)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and two motions to proceed in forma pauperis. Good cause appearing, his request for an extension of time, to and including **July 14, 2008**, in which to file a traverse (docket no. 43) is GRANTED.

Petitioner has also filed a motion for appointment of counsel and a motion for an evidentiary hearing. However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S. C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner if "the court determines that the interests of justice so require," the courts have made appointment of counsel the exception rather than the rule. Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. See Chaney v. Lewis, 801 F.2d

1 1191, 1196 (9th Cir. 1986); Eskridge v. Rhay, 345 F.2d 778, 782 (9th Cir. 1965).

2 At present, both petitioner and respondent have briefed the issues in the case, and
3 respondent has submitted the state court record, including petitioner's state appellate
4 court briefs that were prepared by counsel. After petitioner files his traverse in this
5 matter, the court will review the merits of the petition, and if the court determines at that
6 time that an evidentiary hearing is required, the court will appoint counsel. At present,
7 however, there appears to be no need for an evidentiary hearing or appointment of
8 counsel. Petitioner's motions for appointment of counsel (docket no. 11) and for an
9 evidentiary hearing (docket no. 13) are DENIED without prejudice.

10 IT IS SO ORDERED.

11 DATED: 6/6/08


RONALD M. WHYTE
United States District Judge

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